

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, April 13, 2005, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Jon Carlson, Gene Carroll, Roger Larson, Gerry Krieser, Dan Marvin, Melinda Pearson, Mary Bills-Strand, Lynn Sunderman and Tommy Taylor; Marvin Krout, Ray Hill, Steve Henrichsen, Mike DeKalb, Brian Will, Becky Horner, Greg Czaplewski, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

**STATED PURPOSE OF MEETING:** Regular Planning Commission Meeting

Chair Mary Bills-Strand called the meeting to order. The Clerk submitted revisions to the minutes of the regular meeting held on March 30, 2005. Krieser moved to defer approval of the minutes until April 27, 2005, seconded by Carroll and carried 8-0: Carlson, Carroll, Larson, Krieser, Pearson, Bills-Strand, Sunderman and Taylor voting 'yes'; Marvin absent at time of vote.

The Chair then announced that the applicant for **Item No. 4.1, Special Permit No. 05008**, West Van Dorn Heights Community Unit Plan, has requested to be placed earlier on today's agenda. Upon further discussion, upon motion duly made and seconded, Item No. 4.1 was moved to be the first regular public hearing after the Consent Agenda. Motion carried 7-1: Carlson, Carroll, Larson, Krieser, Bills-Strand, Sunderman and Taylor voting 'yes'; Pearson voting 'no'; Marvin absent at time of vote.

### **CONSENT AGENDA**

#### **PUBLIC HEARING & ADMINISTRATIVE ACTION**

##### **BEFORE PLANNING COMMISSION:**

April 13, 2005

Members present: Carlson, Carroll, Krieser, Larson, Marvin, Pearson, Bills-Strand, Sunderman and Taylor.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 05023 AND PRELIMINARY PLAT NO. 05004, MOUNT OLIVE.**

Krieser moved to approve the Consent Agenda, seconded by Taylor and carried 9-0: Carlson, Carroll, Krieser, Larson, Marvin, Pearson, Bills-Strand, Sunderman and Taylor voting 'yes'.

Note: This is final action on the Mount Olive Preliminary Plat No. 05004, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days.

**SPECIAL PERMIT NO. 05008,**

**WEST VAN DORN HEIGHTS COMMUNITY UNIT PLAN,**

**ON PROPERTY GENERALLY LOCATED AT**

**S.W. 70<sup>TH</sup> STREET AND W. VAN DORN STREET.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 13, 2005

Members present: Carroll, Pearson, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand.

Staff recommendation: Approval, as revised by City Attorney on April 7, 2005, and as revised by the applicant, reflecting 10 single family lots.

Ex Parte Communications: None.

Mike DeKalb of Planning staff submitted the revised drawing from the applicant showing the 10<sup>th</sup> lot. The location of the 10<sup>th</sup> additional lot is acceptable. The staff recommendation is revised to reflect approval of ten lots as opposed to nine.

Proponents

**1. Brian Carstens** appeared on behalf of **Aspen Builders and Bob Benes**, and presented this AG community unit plan at the northeast corner of S.W. 70<sup>th</sup> and W. Van Dorn. He explained that this hearing had been continued to determine the location of the 10<sup>th</sup> lot. It has now been located on the north side of the roadway system. The applicant had no objections to the conditions of approval.

There was no testimony in opposition.

**ACTION BY PLANNING COMMISSION:**

April 13, 2005

Carroll moved approval, with conditions as revised, seconded by Taylor and carried 9-0: Carroll, Pearson, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand voting 'yes'. This is final action, unless appealed to the City Council within 14 days.

**CHANGE OF ZONE NO. 04062**  
**AND MISCELLANEOUS NO. 05008**  
**TO AMEND TITLE 27 AND TITLE 1**  
**OF THE LINCOLN MUNICIPAL CODE**  
**RELATING TO GROUP HOME DEFINITIONS**  
**AND REGULATIONS.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 13, 2005

Members present: Carroll, Pearson, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand.

Staff recommendation: Approval, as revised by City Attorney on April 7, 2005.

Ex Parte Communications: None.

Greg Czaplewski of Planning staff submitted an e-mail communication from Mary O'Hare. Czaplewski explained that this is a change to both the zoning ordinance and a change to Title 1 creating some new definitions and a new section dealing with the city's regulation of group homes. The changes to Title 27, the zoning ordinance, include:

- The definition of Group Home as it currently exists applies to facilities where people reside while receiving care, counseling or rehabilitation for any of several enumerated purposes. The change is to eliminate all of those purposes and apply group homes to disabled or handicap persons, with new definitions for disabled and handicapped.
- Creating a definition for "alternative to imprisonment facility" and treat it as a special permitted use.
- Creating a new use called "childrens home" by special permit. This use has been regulated according to whatever might be the closest use in the zoning ordinance. This change now specifies that use. Four to 15 residents will be regulated as a conditional use similar to group homes. Facilities of over 16 residents would be regulated as a special permit.
- Currently, group homes are a conditional use requiring a permit from Building & Safety, and apply to facilities with between 4 and 15 residents. Under the revised provisions, group homes that have three residents or fewer would fall under the definition of family and can be located in any residential dwelling anywhere in the city. Group homes of 4-15 residents will require a conditional use permit from Building & Safety, be required to maintain a state license and maintain separation distance from other existing group homes. That separation varies from 400' to ½ mile depending on the zoning district.

- Larger group home facilities of 16 or more residents are currently treated as a health care facility and approved by special permit. The proposed changes do not change that regulation structure.
- The alternative to imprisonment facilities previously were conditional use permits and now would be a special permit for any size facility.
- Special permits for childrens home and alternative to imprisonment facilities would be allowed in R-1 through R-8 as well as AGR.

The changes to Title 1 include:

- Creating a “reasonable accommodation” procedure that would allow group home residents or providers to ask the city to modify any of its building or zoning regulations to allow them to go into a facility that might otherwise not be available to them. They can ask for a modification to the zoning ordinance or building code. When that request is submitted to the city, whichever city department has jurisdiction over that regulation would review that request and make a recommendation to the City Council. The City Council would have final action.
- A request to waive a zoning ordinance requirement such as the spacing requirement or to allow a larger number of residents, would come to the Planning Commission for a recommendation to the City Council. Building code issues would not come before the Planning Commission.

Carlson confirmed that these proposed changes do not make any of the existing regulations any more restrictive. A lot of the changes simply move the categories around to make the regulations more in compliance with the federal law. The only substantial change is creating flexibility depending on special circumstances. Czaplewski concurred.

Support

**1. Cathy Beecham, President of Near South Neighborhood Association,** testified that the Near South Board met and voted to support the recommendations of the Group Homes Task Force, and most specifically, the maintenance of the spacing requirements between group homes as well as the requirement that no more than three unrelated persons be considered a family. These are the current regulations and need to remain in place. If the idea behind community based recovery is to have someone in treatment be part of the community, then the spacing requirements do help this effort. If the spacing requirements were eliminated, it would be detrimental to someone in treatment because it is not community based if there are group homes close together.

With regard to three unrelated persons making a family, the Near South neighborhood believes that three is a good number and should be maintained. This needs to be about the

treatment and the quality of treatment and not economics or profit. If there are more than three, it is important to have the additional supervision that is currently required.

### Opposition

**1. Scott LeFevre**, 2150 Ridgeline Drive, testified in opposition. He submitted that the separation requirements are discriminatory under the Fair Housing Act. Because a person has a disability and the economics necessitate that those individuals live in a congregate environment because they are on public assistance, means that there needs to be a certain number of individuals living together to be able to afford that housing. There is a joint statement by Housing and Urban Development and the Department of Justice that states unequivocally that spacing requirements are almost always unlawful. This requires Hispanic families to live ½ mile from each other, etc.

LeFevre stated that he takes offense to the treatment. When we talk about people with disabilities, specifically developmental, treatment connotes that people are ill. People with developmental disabilities have illnesses like everyone else and they do not require treatment, but rather rehabilitation, assistance and support in different areas of their life. Sometimes it is simply helping people to learn daily skills. They are not necessarily in treatment.

Currently, the zoning ordinance provides that one person can establish a family. If one person establishes a family, they can have individuals with disabilities residing with them under the auspices of an adult foster family. LeFevre suggested that that almost negates the idea of the group home as a provider of services to people with disabilities if we decided to do “house parent” arrangement where an individual moves into a home and declares it their primary residence and bypasses the group home process. He believes it is unfair to classify individuals and limit them to three in a family. If we are talking about health and safety issues, it should be looked at as total occupancy for a house. Today, families come in all shapes and sizes. LeFevre recommended that the Planning Commission take a serious look at some of the other issues before approving this legislation.

With regard to the spacing requirement, Pearson pointed out that this talks about unrelated people – not race or gender. LeFevre suggested that when these cases have gone to court, most of the precedence has been that because of the nature of the financial situation that people with disabilities find themselves in, they are a protected class just as are any other group of a different ethnicity, religion, etc. He is not sure what purpose it serves to prohibit a group home from locating three houses away from another group home, other than the perception that people have that they don’t want all of those people in their neighborhood.

Pearson does not believe it is just related to disabilities. But, because of the fact that people with disabilities are a protected class, LeFevre believes they should be given the opportunity for reasonable accommodation. As a protected class, there has to be some leeway given knowing those folks have to live in a congregate environment different than ordinary citizens.

**2. Pat Anderson**, 1500 S. 11<sup>th</sup>, testified, stating that she is not sure she is in opposition. Her main issue is spacing. She has worked in emergency services for 5 years and encountered a lot of people with mental disabilities that always lived in apartment buildings and were taken advantage of by the general public. When you differentiate spacing by zoning, she believes it puts people with disabilities at higher risk by putting them into more dense populations. It makes them more vulnerable. She suggested that the spacing be the same for single family dwellings as well as for apartments.

Anderson also acknowledged that increased training requirements and improved training quality is good, but it is difficult to get staff to stay around long enough to take advantage of the training. It is more important to improve the monitoring of performance and inspection compliance and to respond to problems. This is her biggest issue as far as dialog or communication with the state or other agencies. They need to truly address issues of the neighbors as opposed to just giving lip service.

Taylor sought to confirm Ms. Anderson's position on density. She believes there should be some sort of spacing requirement, but it should be the same in each zoning district. People with mental disabilities are taken advantage of more frequently in the more densely populated areas.

Rick Peo of the City Law Department approached the Commission and clarified that 1) the definition of family is not before the Commission today, and 2) the spacing and separation requirements are not before the Commission today. Those requirements are not being amended at this time. This is an application from the Mayor to implement the Group Homes Task Force recommendations. It is a relatively modest change to the zoning code, primarily to reflect definitional changes for clarification and inconsistencies between the prior definition of group homes and single family. There are complicated issues beyond what is before the Commission today that the task force looked at but could not fully address or did not attempt to change. If those issues need to be looked at, those individuals need to come forward with their own proposal.

Peo also advised that the City is currently in litigation over the validity of the ordinance and some of its terms, to which there should be resolution soon and a determination of other changes that may be necessary. This proposal looks at trying to provide a reasonable accommodation procedure to allow individuals to come forward and show that there is a need and necessity to require an exception. This procedure is better than what we have currently. This is an effort to simplify matters and make it more equitable.

**CHANGE OF ZONE NO. 04062**

**ACTION BY PLANNING COMMISSION:**

April 13, 2005

Carroll made a motion to approve, seconded by Taylor and carried 9-0: Carroll, Pearson, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

**MISCELLANEOUS NO. 05008**

**ACTION BY PLANNING COMMISSION:**

April 13, 2005

Taylor moved approval, as revised by the City Law Department on April 7, 2005, seconded by Carroll.

Carlson indicated that he served on the task force. He believes these are good changes and he appreciates the comment that the reasonable accommodation procedure should have been created 15-16 years ago. The message that he hears over and over is that disabled citizens deserve and should be treated the same as any other person. He believes that the definition of family does exactly that. We have created an additional opportunity for those with disabilities to live in a higher number in group homes, and reasonable accommodation creates some leeway on a case-by-case basis to analyze to see if their particular needs can be met.

Motion for approval, as revised, carried 9-0: Carroll, Pearson, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

**CHANGE OF ZONE NO. 04066,**

**TEXT AMENDMENT TO TITLE 27;**

**MISCELLANEOUS NO. 04015, TEXT AMENDMENT  
TO CITY OF LINCOLN DESIGN STANDARDS;**

**and**

**MISCELLANEOUS NO. 05007, TEXT  
AMENDMENT TO TITLE 26,  
RELATING TO STREETSCAPES.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 13, 2005

Members present: Carroll, Pearson, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand.

Staff recommendation: Approval

Ex Parte Communications: None.

Becky Horner of Planning staff advised that the Department has received telephone calls from members of the development community requesting to meet with staff to discuss the proposals outside of the public hearing. The staff is prepared to do so and would request to put these items on indefinite pending to work with the development community.

Larson moved to place on pending, seconded by Taylor.

Carlson commended the Director of Planning for trying to take the previous applications off pending to consolidate into these proposed amendments. He likes the direction this is going and he is encouraged by the proposed amendments.

There was no other public testimony.

Motion to place on indefinite pending carried 9-0: Carroll, Pearson, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand voting 'yes'.

**ANNEXATION NO. 05006;**  
**CHANGE OF ZONE NO. 05024**  
**FROM AG AGRICULTURAL TO R-3 RESIDENTIAL;**  
**and**  
**SPECIAL PERMIT NO. 05015,**  
**HARTLAND'S GARDEN VALLEY COMMUNITY UNIT PLAN,**  
**ON PROPERTY GENERALLY LOCATED AT**  
**NORTH 14<sup>TH</sup> STREET AND HUMPHREY AVENUE.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 13, 2005

Members present: Carroll, Pearson, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand.

Staff recommendation: Approval of the annexation, subject to an annexation agreement; approval of the change of zone; and conditional approval of the community unit plan.

Ex Parte Communications: None.

Becky Horner of Planning staff submitted a letter from the applicant asking for a two-week deferral to advertise an additional waiver.

Taylor moved to defer two weeks, with continued public hearing and action scheduled for April 27, 2005, seconded by Carroll and carried 9-0: Carroll, Pearson, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand voting 'yes'.



Opposition

1. **Annabelle Neemann**, 7001 N. 7<sup>th</sup>, testified that the neighbors are concerned about the plans to widen Humphrey Avenue and Pennsylvania Avenue, and what will be done with 7<sup>th</sup> Street. Will it remain gravel? How wide will Humphrey and Pennsylvania be?

Bills-Strand suggested that Ms. Neemann visit with Brian Carstens who is representing the developer, or Dennis Bartels of Public Works, and if she does not get her questions answered, she is welcome to come back on April 27<sup>th</sup>.

**ANNEXATION NO. 05007,**  
**CHANGE OF ZONE NO. 05025**  
**FROM AG AGRICULTURAL TO R-3 RESIDENTIAL;**  
**and**  
**SPECIAL PERMIT NO. 05017,**  
**RAVENWOOD COMMUNITY UNIT PLAN,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT S. 93<sup>RD</sup> STREET AND OLD CHENEY ROAD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 13, 2005

Members present: Carroll, Pearson, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand.

Staff recommendation: Approval of the annexation, subject to an annexation agreement; approval of the change of zone; and conditional approval of the community unit plan.

Ex Parte Communications: None.

Proponents

1. **Brian Carstens** appeared on behalf of **Ironwood, LLC, and Bob and Margaret Schultz**, explaining that this is the last piece of the HiMark subdivision along Old Cheney Road. The developer has now entered into purchase agreements on a large 21-acre piece and already owns the 5-acre piece. They are proposing to change the zone to R-3 for 44 single family lots. 93<sup>rd</sup> Street will be a public street with roundabout and there will be a private roadway to the north and east. The units will range in size from 9,000 to 40,000 sq. ft. of lot area.

Carstens requested that Condition #1.1.1 be amended as follows:

Remove the 5 4 subdivision ground signs shown at Ravenwood Lane South and Ravenwood Lane North, ~~and Ravenwood Circle.~~

Carstens believes that staff is in agreement with this amendment.

Carstens further explained that they want a ground sign off of Old Cheney Road; one at the entrance to the private cul-de-sac; and then something as you enter in from the west. There was no testimony in opposition.

Greg Czaplewski of Planning staff agreed with the proposed amendment. Building & Safety had wanted those five internal signs removed. But, after the staff report was prepared, it was agreed that one sign can stay and four would still need to be removed. Staff agrees with the proposed amendment.

Carlson inquired as to the number of dwelling units per acre. Carstens believes it would calculate to less than two dwelling units per acre. There are city water and city services to that parcel.

**ANNEXATION NO. 05007**

**ACTION BY PLANNING COMMISSION:**

April 13, 2005\

Larson moved approval, subject to an annexation agreement, seconded by Marvin and carried 9-0: Carroll, Pearson, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

**CHANGE OF ZONE NO. 05025**

**ACTION BY PLANNING COMMISSION:**

April 13, 2005

Carlson moved approval, seconded by Carroll and carried 9-0: Carroll, Pearson, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

**SPECIAL PERMIT NO. 05017**

**ACTION BY PLANNING COMMISSION:**

April 13, 2005

Taylor moved to approve the staff recommendation of conditional approval, with the amendment requested by the applicant, seconded by Marvin.

Carlson noted the continuing concerns about affordable housing and proper density and how this application takes advantage of existing infrastructure. It is important for the Commission to be mindful of this in approving developments.

Marvin thinks that flexibility is the key.

Motion for conditional approval, with amendment, carried 9-0: Carroll, Pearson, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand voting 'yes'. This is final action, unless appealed to the City Council within 14 days.

**COMPREHENSIVE PLAN AMENDMENT NO. 04010**  
**TO CHANGE LAND USE DESIGNATION FROM**  
**RESIDENTIAL TO COMMERCIAL**  
**and**  
**CHANGE OF ZONE NO. 05026,**  
**APPLE'S WAY PLANNED UNIT DEVELOPMENT,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT S. 66<sup>TH</sup> STREET AND HIGHWAY 2.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 13, 2005

Members present: Carroll, Pearson, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand.

Staff recommendation: Denial.

Ex Parte Communications:

Commissioner Bills-Strand disclosed that she and Roger Larson met with Mark Hunzeker to review the project.

Marvin disclosed that he had a telephone conversation with Peter Katt, who talked about traffic counts and the impact of traffic on Hwy 2.

Sunderman disclosed that he also met with Mark Hunzeker.

Pearson disclosed a phone call from Mark Hunzeker regarding what she considers to be the access to 56<sup>th</sup> and the designation of the commercial big box versus residential.

Brian Will of Planning staff submitted additional information for the record, including an e-mail from the Planning Director to the applicant's representative to clarify some of the statements and substance of the letter attached to the staff report on the Comprehensive Plan Amendment from Marvin Krout to Mark Hunzeker (p.193).

The additional information also included two letters from Royce Mueller and Jim Krieger in a neutral position, and five letters in opposition.

Proponents

**1. Tom Huston**, 233 S. 13<sup>th</sup> Street, Suite 1900, appeared on behalf of the applicants, Apple's Way, LLC, and UNO Properties Corporation. This morning the applicants made the decision to request a two-week deferral. Over the last 24 months, the applicants have been working closely with the Country Meadows Homeowners Association. Due to some of the letters received in opposition, the applicants are requesting a two week deferral to again meet with the Board of Directors of the Association and perhaps meet with the general neighborhood association.

Huston explained that the concept plan submitted was designed to address the entire site. He submitted a letter from the Lincoln Trade Center in full support of the proposal, and the letter from Royce Mueller, who is the President of the neighborhood association.

Another reason for the deferral is to resolve some of the procedural issues that involve the staff report. There are 19 site specific conditions, 10 to 11 of which deal with the preliminary plat process. Huston stated that the applicant did not request a waiver of the preliminary plat process and they envision going through that process to deal with the engineering issues. They are utilizing the PUD ordinance to see if they have a concept that is acceptable. They will meet with staff to address a lot of the site specific conditions. Huston also believes there are conditions that can be added to increase the comfort level of the neighborhood. The site plan envisions a residential portion and a commercial portion, and the applicants are confident that they can address the concerns of the neighborhood on the residential portion through restrictive covenants. Huston also believes they can address the issues in the commercial area through site specific conditions in the PUD process.

Huston also requested to be as early on the April 27<sup>th</sup> agenda as possible.

Taylor moved to defer, with continued public hearing and action scheduled for April 27, 2005, seconded by Krieser and carried 9-0: Carroll, Pearson, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand voting 'yes'.

\*\*\* Break \*\*\*\*

**COMPREHENSIVE PLAN AMENDMENT NO. 05012,**  
**ANNEXATION NO. 05005,**  
**and**  
**CHANGE OF ZONE NO. 05020,**  
**PRAIRIE VILLAGE PLANNED UNIT DEVELOPMENT,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT NO. 84<sup>TH</sup> STREET AND ADAMS STREET.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 13, 2005

Members present: Carroll, Pearson, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand.

Staff recommendation: Approval of the Comprehensive Plan Amendment; approval of the annexation, subject to an annexation agreement, and conditional approval of the Planned Unit Development.

Ex Parte Communications: None.

Becky Horner of Planning staff submitted four letters, one indicating preference for a site further north on 84<sup>th</sup> Street, and the other three letters urge a vote for Option A. Horner clarified that Option A is 800,000 square feet of commercial floor area and 850 dwelling units. In the applicant's submittal letter, Option A included a big box store on the northeast corner. Option B has been withdrawn by the applicant, which placed the big box store on the southeast corner.

Proponents

**1. Jason Thiellen of Engineering Design Consultants** appeared on behalf of **Prairie Homes**. He stated that Option B has been withdrawn and apologized for the late notice. Today was the first time they felt comfortable with just bringing forward Option A alone. Thiellen expressed appreciation to the Planning and Public Works staff for their hard work and cooperation, and he requested that the Commission and the adjacent neighborhoods be patient. They are all working very hard to come forward with a quality project and development for the community.

The Comprehensive Plan Amendment will allow development of the Prairie Village North Planned Unit Development. The change of zone request is from AG to R-3, R-5, O-3 and B-2 for approximately 850 dwelling units with combination of multi-family, townhomes, single family and attached single family. Option A encompasses many elements from the City's Comprehensive Plan, with pedestrian oriented retail plaza; a commercial center comprising of services desired by residential development; and an office park to provide jobs to the residents nearby. The office, commercial and retail area has been centralized within the development, the idea being to remove the strip mall look along 84<sup>th</sup> Street and create a

destination for those coming to shop and those that will live. The entire development will be connected with a series of bikeways and pedestrian paths; the retail plaza is located between both of the big box units in the commercial area and will also be pedestrian oriented.

Thiellen reminded the Commission that these applications deal with the land use issues only within the PUD. The developer is not here to talk about specific uses. They have created a center with some higher density townhouse as well as a multi-family aspect. Everything else is single family and attached single family with office to the south side.

**2. Peter Katt** appeared on behalf of **Prairie Homes**, the developer. This has been a multi-year project in terms of his client. Prairie Homes has developed Prairie Village on the south side of Adams, and has now been able to assemble approximately 270 acres. That portion in the flood prone area in Stevens Creek has been excluded from this proposal. The issues in the flood prone area create more complexity.

Katt explained that the commercial component of this project is by far the smaller piece, and so far, from what he can tell, the commercial component has received the greatest attention. Katt does not believe that should be the case because it is a small component of creating a well-planned and organized residential and commercial area in north Lincoln. This area will well integrate the commercial components, transitioning and buffering into the residential area.

Katt also urged that this is a land use question. In terms of the Comprehensive Plan, this developer was involved in the last update which changed this area to residential and a neighborhood center. Immediately preceding that, this area was designated as an employment center. The benefit to the community now is that one owner can control and develop this entire area with one vision. They have brought forward a vision which the developer believes to be appropriate and fully consistent with the Comprehensive Plan, with minor amendment.

**3. Tom Huston**, 233 S. 13<sup>th</sup>, appeared on behalf of **Wal-Mart Stores**. This application is not Wal-Mart's application – it is a Prairie Home Village application, but the staff report talks about the potential location of Wal-Mart in this center. Huston stated that Wal-Mart is supportive of this application. When Wal-Mart was looking at the city to locate a store somewhere in the N. 84<sup>th</sup> Street corridor, obviously it started with the Comprehensive Plan and identified 20 acres at the southeast corner of 84<sup>th</sup> and Adams. At that time, this site on the northeast corner did not have that commercial designation. Wal-Mart recognizes the issues that have been presented by some of the adjoining neighborhoods, particularly Faith Lutheran, and had a meeting with them in March whereby Wal-Mart agreed to put the southeast corner application on hold and not pursue that pending resolution of the issues before the Commission today. Since that meeting, Wal-Mart will be taking the issue to its real estate committee and hopes to have a public announcement within 10 days to 2 weeks.

**4. Mark Hannemann, Sr. Pastor at Faith Lutheran Church,** appeared on behalf of the congregation and school in favor of Option A. The church and school had many concerns about the Wal-Mart proposal on the southeast corner and those concerns are significantly lessened with a commercial development across the street north. This would be a much better option for the church and school. They still have concerns about traffic volume, but if the big box store can be moved further away to the north, that will make for a better situation for families in the growing school and church ministry.

Hannemann also indicated that one of the major concerns is the potential (as was intimated in the article in the paper this week), that some kind of end-around could potentially happen with Wal-Mart resubmitting a proposal for that southeast corner of 84<sup>th</sup> and Adams. That is of great concern. Any safeguards that can be put in place to keep that type of large scale operation from the southeast corner will be appreciated.

Hannemann explained that Faith Lutheran moved from 63<sup>rd</sup> and Madison to 84<sup>th</sup> & Adams because of the increased traffic. The school was growing and traffic congestion was a significant issue there and they had hoped to avoid that in this new location. They realize that heavy volumes of traffic will be invited with both the residential and commercial uses, and they are concerned about the east/west connecting roads. However, the primary concern, of course, is the property immediately to the school's west so Faith Lutheran is anxious to see Option A move forward with the big box store moving across the street to the north, which will significantly reduce their concerns.

**5. Charlie Humble, Erickson & Sederstrom,** appeared on behalf of **Faith Lutheran Church and School,** and conveyed that prior to the meeting that Mr. Huston talked about in which the church had formed a task force and met with the Wal-Mart representatives, there was another meeting at the church which was well attended and there was a tremendous amount of concern expressed about having a big box adjacent to this brand new school and church facility. Now, with what appears to be occurring, he has been authorized to say that the church and school are in favor of Option A. If that holds, then that would be a good "land use solution" to this problem and to this area. On behalf of the church and school, he believes Option A is workable and they would be much more supportive of that kind of approach. Absent that, the opposition level would be a crescendo. The Commission needs to understand the depth of concern if this proposal does not go forward as suggested today.

#### Neutral

**1. Carol Brown,** 2201 Elba Circle, requested that Wal-Mart become a good corporate citizen. She showed photographs of the area in close proximity to Wal-Mart on North 27<sup>th</sup> Street, showing the Wal-Mart sacks and debris from unpacking in the parking lot and adjacent areas. There are some very terrible areas right around the store that need to be addressed.

The Commission needs to consider what these kinds of developments do to the neighborhoods and everyone else around it. She requested that Wal-Mart be asked to be responsible. Why should we be doing this to our trails and bike paths? There has to be some responsibility.

### Staff questions

Carlson asked staff to further explain the Comprehensive Plan Amendment, i.e. the types of uses that are called for in the neighborhood center versus a community center. Steve Henrichsen of Planning staff stated that the neighborhood center would be closer to 250,000 sq. ft. in floor area. A community center would be closer to what is being proposed. Up until 2004, the Comprehensive Plan showed a commercial and an employment center here with over two million square feet in floor area, and that was the rationale for recommending approval of the Comprehensive Plan Amendment. The two million square feet that could have come forward on the northeast corner included a lot of industrial space, such as is found in Horizon Business Center, so the two million square feet would not have been all retail. In fact, probably less than half would be retail. It was designated employment center so there would be appropriate buffers and transition between industrial uses on the north side of Adams and any of the residential uses on the south side of Adams.

Carlson recalled that the intent of the employment center designation is to find higher quality employment. Henrichsen responded stating that the intent was to have a variety of employment centers throughout the community with opportunity for light industrial space. We had designated several employment centers with light industrial throughout the community. This site was shown as light industrial, employment center for about eight years without any uses coming forward. It was noted that if this land did not develop for industrial use, it could go to urban residential use.

Carlson observed, then, that last year the community changed its mind and wanted a neighborhood center of 250,000 sq. ft. Henrichsen suggested that typically the neighborhood center gets uses serving a smaller jurisdiction. The trend now tends to be more larger stores all under one roof.

Carlson assumed that one of the reasons for changing the community center to a neighborhood center is that there was already a community center designation in northeast Lincoln. Henrichsen indicated that there are two community centers – one at 84<sup>th</sup> & Holdrege, which is one mile away. Typically the larger community size commercial centers want to be spaced further apart. The northwest corner includes a large area approved through the use permit and change of zone for a big box grocery store or discount store. The other three corners are smaller office buildings. The other large community size center is at 98<sup>th</sup> and O, designated for light industrial, employment center. Waterford Estates at 98<sup>th</sup> & O is moving forward on the residential portion with quite a bit of infrastructure to build before that land is available.



Henrichsen further explained that 84<sup>th</sup> & Holdrege was shown as a community center in the Comprehensive Plan, with several different zoning districts on each of the corners. Just on the northwest corner of that intersection there is enough space approved for a single big box use.

Marvin confirmed that the community centers are typically spaced three miles apart. Henrichsen concurred. The Comprehensive Plan shows neighborhood centers one mile apart, and community centers in the range of two to three to four miles apart. 84<sup>th</sup> & Holdrege is one mile from 84<sup>th</sup> & Adams.

Marvin inquired about changing the zoning at 84<sup>th</sup> & Holdrege. Henrichsen stated that it would remain designated as a community size center. The real reason the staff is recommending approval of this change to community center at 84<sup>th</sup> & Adams is when the transportation network was planned, the city had planned that there would be a considerable amount of space on the northeast corner of 84<sup>th</sup> & Adams. Option B would allow a potential larger big box user on the southeast corner. It made more sense to the staff to have the planned larger center in Option A on the northeast corner.

Marvin inquired about the roads at 84<sup>th</sup> & Holdrege, west of 84<sup>th</sup> Street. Henrichsen stated that immediately west is the four lanes of concrete, and then Holdrege transitions back to ultimately a 3-lane (2+1) road.

Carroll inquired about the change to B-2 on the south side of Adams. Henrichsen advised that B-2 would allow a use permit that could allow a single large user on the southeast corner. Under B-2, any use permit needs to look at appropriate transition and buffer. B-2 says the site is appropriate for retail use. B-2 does not carry a cap on the amount of square footage. There are 23-25 acres on the southeast corner, equating to 10,000 sq. ft. per acre, generally around 250,000 sq. ft. of any type of commercial use on the southeast corner.

Pearson inquired as to the impact on the adjacent roadways, 84<sup>th</sup> and Holdrege, as the result of a land use change from residential to commercial and from neighborhood center to community center. What might be anticipated? Dennis Bartels of Public Works stated that he really hadn't studied it with that in mind. He was reviewing the traffic study. The traffic study for this development as a whole, with Prairie Village on the north side of Adams and on the south side, anticipated daily trips of 31,000 + generated from around 300 acres of residential and commercial mix.

Pearson inquired whether the existing roadways are designed to accommodate that, or is there any plan in the CIP to have improvements? Bartels stated that the traffic improvements will have to be worked out in the annexation agreement. With what is already approved and what would be approved with this proposal, the traffic study showed that the capacity of 84<sup>th</sup> Street would be used up by 2010-2015. The Comprehensive Plan shows potential need in the future for a six-lane facility with three through lanes each direction on 84<sup>th</sup> Street between O Street and Cornhusker Highway, based on proposed traffic. Signal improvements would

be needed at 84<sup>th</sup> & Adams, and a decision would need to be made whether to consider 4 lanes on Adams between 70<sup>th</sup> and 84<sup>th</sup>, which is contrary to the Comprehensive Plan (two lane is anticipated in the Comprehensive Plan). The traffic study did show some improvements needed to handle the traffic. How we will accomplish those improvements has not been fully determined. It makes it difficult at 84<sup>th</sup> & Adams with the cemetery use which will not change. It is a mystery how long the golf course use might stay there. There would need to be a method figured out to stage the improvements. The traffic study did show warrants for signals at nearly every 1/4 mile intersection between Holdrege and Havelock Avenue. 84<sup>th</sup> Street, with the existing four-lane configuration with improvements identified, would accomplish an acceptable level of service but will not handle the traffic as expediently as it does now.

Pearson inquired whether any of the improvements for 84<sup>th</sup> Street and Adams Street are in the CIP. Bartels stated that there is nothing in the CIP for 84<sup>th</sup> Street. Early this year, Public Works hired a consultant to look at designing an Adams Street improvement based on 2+1, but it is on hold. (Bartels approached the Commission later in the hearing to clarify that Adams Street is in the CIP for funding by the bond issue that did not pass. It is shown as a project in the CIP as an urban cross section to a three-lane 2+1 type facility to 84<sup>th</sup> Street. However, there is no funding because the bond issue failed.)

Bartels confirmed that the widening west of 84<sup>th</sup> Street is not in the CIP. Marvin inquired whether Holdrege is wider than Adams. Bartels advised that Holdrege is closed right now to construct a four-lane cross section from 84<sup>th</sup> to 88<sup>th</sup> Street, with the original Regent Heights that also accommodated some of the retail on the north side of Holdrege west of 84<sup>th</sup> Street. Going into the built up area of the city, Holdrege is a 2+1 cross section.

#### Additional Public Testimony

**1. Edward Stringham**, 2231 N. 76<sup>th</sup> Street, approximately one mile from 84<sup>th</sup> & Adams, testified in opposition to a big box store at 84<sup>th</sup> & Adams because of the traffic pattern. Both of the other Wal-Mart sites in Lincoln have been successful because of the good traffic planning with four and six-lane streets. The traffic planning for the proposed site has not lent itself for this kind of facility. Adams is 2 lanes, and west of 84<sup>th</sup> Street it is almost completely bounded by residents and widening that would involve taking out a lot of residences. This site does not have anywhere near the traffic flow availability that this size of facility would require. He is also opposed because of disruption to the neighborhood and existing institutions, including a cemetery, school, etc. There are concerns about firearms being sold near a school; security; and noise and light impact on the church from a 24-hour facility. Stringham is a volunteer for Lincoln Public Schools and he has visited 51 of 53 school buildings. There are no private or public schools immediately adjacent to or across the street from a big box retail development.

Stringham is also concerned about aesthetics. The other two Wal-Mart stores have been placed so they are not adjacent to residences. We already have a ring of residences around the proposed site, approximately one block away, in full view of that site.

Stringham is still opposed to Option A, which places the big box store across the street from the school.

**2. Stuart Tietz, Principal of Faith Lutheran School,** encouraged the Planning Commission to consider the foot traffic potential that is around a school with children walking to and from school in a neighborhood considering a large box store. We are asking the children to cover four to six lanes of traffic. In the school environment, we do everything to protect the children in movement on foot. When you have large retail box stores, you have high volume of traffic and there are children and people walking in a school neighborhood. Locating that volume kind of store in a school and neighborhood creates a concern for children and pedestrians. Typically, in a large box store environment, the large box store is put in an environment where foot traffic is at a minimum with auto traffic accessibility.

In response to a question by Marvin, Bartels advised that there are two access points shown in the ½ mile frontage on 84<sup>th</sup> Street. There are already two median openings, one just south of the bike path and then one at basically 87<sup>th</sup> Street, which is a four-way intersection on Adams, where we anticipate another median opening.

With regard to traffic signals, Bartels advised that the traffic study done by the developer showed that those intersections would ultimately need traffic signals.

#### Response by the Applicant

Peter Katt responded to the testimony regarding the concern about the level of impact on the adjacent neighborhood that a development of this magnitude may have. He stated, “rest assured that there is no one in the city that has more money invested or more at risk than his client on making sure that the transition between the commercial component and the residential development is wonderful, because he is investing millions, and will invest millions, in building that neighborhood, and he does not want to have a commercial area immediately adjacent to this huge investment that is something that is not going to be attractive that he will not be able to market to people that want to live there. No one in the city has more at risk than his client in making sure that this commercial component is acceptable and will be conducive to having a neighborhood adjacent to it.”

With regard to the various questions in terms of the Comprehensive Plan amendment, Katt displayed the land use map from the Comprehensive Plan. There is a significant portion of commercial being moved to the north side, but as a part of the staff recommendation in terms of the PUD, the area which remains commercial is of a significantly different character than the commercial component that exists today because it requires a much lower intensity of commercial use, split between office and retail, and the Planning staff is taking into account

a lot of various factors in recommending a change and moving it up to the north. The more intense retail component, big box potential, will be moved north into an area that has no current development; will be able to be well-sited and designed to be compatible with the adjacent neighborhood; and will eliminate the possibility of any big box locating on the south side of Adams. In addition, all of that more intense commercial retail will all be accommodated without the need to drive on 84<sup>th</sup> Street and Adams Street.

Katt also pointed out that Option B (which has been withdrawn) was fully consistent with the Comprehensive Plan, which would allow 250,000 sq. ft. of more intense retail on the south side of Adams, and that much or more on the north side. Thus, this proposal (Option A) consolidates all of that more intense retail component into one location and makes for a lower impact on the neighborhood.

With regard to existing community center designation at 84<sup>th</sup> & Holdrege, that designation has been on that property for over 6 years. Does the market place play any part in decisions about where people make the investment? No big box retailer has yet been willing to make the investment of developing the 84<sup>th</sup> and Holdrege site. So if the market place has any meaning, and if our Comprehensive Plan and zoning is to respond to market needs, this site has interest. 84<sup>th</sup> and Holdrege does not.

With regard to issues on roadways, Katt noted that the professional staff recommendation on the roadway configurations for both Holdrege and Adams were 4+1. That advice was ignored and for whatever reason, those configurations became 2+1. A community can make a choice that the level of service is less than ideal but accommodates neighborhood interest, and so far the city has said we do not desire the ultimate level of transportation network in this area. We are willing to live with less traffic because we want to do 2+1. If the Comprehensive Plan has meaning, then that community choice should be respected. Staff has indicated that the road network is going to be insufficient no matter what develops.

With regard to the site plan specifics and layout, Katt advised that those are details that need to happen in the annexation agreement. At this point, the city says it has no money. Those are negotiations that will happen for this to move forward to the next level.

As to the “bigger picture” – is this better for our community in the long run? – Katt asked the Commission to remember that Adams is designed and planned for a connection with 98<sup>th</sup> Street, and even further out a connection to the East Beltway. What does that tell you about our long range vision for Adams Street? It says a lot.

Katt also noted that there was some testimony about opposition to big boxes in general. The Comprehensive Plan does not talk much about big boxes but overall square footages. We need to recognize that what gets built is what is attractive in the market place, and what is attractive in the market place is where people are willing to spend their dollars. Today people are wanting to spend their dollars at retail establishments that are under one roof. We need to accommodate the market demands as best we can and then mitigate and work to make

sure that the siting locations can achieve the best overall result for everyone. Katt believes that Option A of this proposed PUD accomplishes that balance for our community – providing a place to meet the market need – and is respectful of the rest of the neighborhood.

**COMPREHENSIVE PLAN AMENDMENT NO. 05012****ACTION BY PLANNING COMMISSION:**

April 13, 2005

Pearson moved to deny, seconded by Carlson.

Pearson commented that this talks about changing the zone from residential to commercial, which is increased use; and neighborhood to community center, which is increased use; and the traffic count could be 31,000 + a day. We have a two-lane paved street with houses on both sides. It is going to be very difficult. It is adjacent to a cemetery, a golf course, a church and a school. She can see where this development would work in many places in Lincoln, but she is having a hard time believing this is the site for it.

Carlson referred to p. 223 of the agenda (p.3 of the staff report) commenting on the community center that existed prior to last year, which states:

The Community Center designation at 84<sup>th</sup> and Adams was not necessary to serve the needs of this area, but was instead reflecting that the large Employment Center may also include some office and retail use that would be beyond the size of a Neighborhood Center. If the 84<sup>th</sup> and Adams Community Center is deleted, a new location for this center does not need to be found, due to the proximity to three other Community Centers.

If we are looking at this from a planning perspective, Carlson believes that northeast Lincoln is being served. He believes the Comprehensive Plan shows appropriate commercial areas. Also, it is previously designated that it should be an employment center. It is important that economic development creates higher wage jobs. An employment center is the type of center that is likely to do that. Retail is not likely to do that. When we talk about the existing neighborhood center designation versus community center designation, we have already established that there is not a need for a community center here but potentially a need for a neighborhood center. From a planning perspective, Carlson believes there needs to be further discussion about the super center dynamic before making this change and the accompanying annexation and change of zone. We need to be asking the broader question – Is this better for our community? The super center gobbles up the neighborhood. Is that better for our community? As we try to look broadly, he thinks that it is not. We need to consider what is better to facilitate the higher paying jobs, the stronger local retail, the neighborhood center and the neighborhood uses around it.

Larson agreed. The traffic that is going to be generated is too much next to a golf course, a school, a church and a cemetery. It just doesn't seem to fit. He does not see the need for a super center at this location.

Bills-Strand pointed out that this proposal does not increase the overall commercial square footage. The Planning Commission is not making a political decision.

Motion to deny carried 5-4: Pearson, Marvin, Carlson, Taylor and Larson voting 'yes'; Carroll, Krieser, Sunderman and Bills-Strand voting 'no'. This is a recommendation to the City Council.

**ANNEXATION NO. 05005**

**ACTION BY PLANNING COMMISSION:**

April 13, 2005

Carlson moved to deny, seconded by Pearson and carried 5-4: Pearson, Marvin, Carlson, Taylor and Larson voting 'yes'; Carroll, Krieser, Sunderman and Bills-Strand voting 'no'. This is a recommendation to the City Council.

**CHANGE OF ZONE NO. 05020**

**ACTION BY PLANNING COMMISSION:**

April 13, 2005

Carlson moved to deny, seconded by Pearson and carried 5-4: Pearson, Marvin, Carlson, Taylor and Larson voting 'yes'; Carroll, Krieser, Sunderman and Bills-Strand voting 'no'. This is a recommendation to the City Council.

There being no further business, the meeting was adjourned at 3:40 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on April 27, 2005.